Supreme Court, U.S.
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No. 95-933

In The

Supreme Court of the United States

October Term, 1995

WESLEY KEAT,

Petitioner,

vs.

MARIA DE LA LUZ CHAVEZ, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Two

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the Fourth Amendment to the Constitution of the United States limit a peace officer's liability for violations thereof *only* to instances where the peace officer uses "excessive force"?

2. Did the standards for reviewing punitive damage awards in this California case meet constitutional standards?

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Respondents, Maria De La Luz Chavez, *et al.*[1] respectfully request that this Court deny the Petition for Writ of Certiorari which seeks review of the Decision of the California Court of Appeal, 4th Appellate District, Division Two, which is partially reported at 34 Cal. App. 4th 1406, 41 Cal. Rptr. 2d 72 and (Cal. Ct. App. 1995, and is reprinted in Appendix 1 of the Petition for Certiorari). The Judgment of the Riverside County Superior Court that was affirmed by the California Court of Appeals was not reported. That Decision is reprinted in Petitioner's Appendix at pages 82 to 90.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and not Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

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1. The full list of Respondents is included in the List of Parties (Rule 14.1(b)) section of Petitioner's Petition for Certiorari.

> the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. 42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

STATEMENT OF JURISDICTION

Respondents submit that Petitioner has manufactured facts as they would like them to be and which were not found to be by the jury in the instant case. From the said manufactured facts they raise law which is inapplicable to the case at bar.

Respondents submit that this Court should not have jurisdiction to review the decision of the California appellate court by this Writ of Certiorari because none of the possible

questions presented by the Petitioner fall within Supreme Court Rule 10(c). Their questions present no important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court.

STATEMENT OF THE CASE

Petitioner's statement of questions presented, and Petitioner's statement of the facts of the case, is misleading and misstates the findings of the jury in the underlying case. Petitioner's questions and statements of fact are biased in the extreme and are improper argument for a Petition for Writ of Certiorari by this Court. Petitioner attempts to bootstrap himself in an attempt to bring him within the jurisdiction of this Court by misleading misstatements of the facts of this case as he wishes they were; when factually they are not.

From these misleading misstatements of manufactured facts he tries to use issues of law that are inapplicable. It is not this Court's function to rule on facts or credibility of witnesses. That was the jury's function and they performed it.

The misleading misstatements of facts by Petitioner is not new. Similar attempts were made when the matter was under consideration for review by the California Supreme Court (which review was denied by said court as stated in App. 96 of the Petition).

The misstatements were so blatant and troublesome that the trial court judge wrote to the attorney for the County of Riverside and this writer, with a copy to the Chief Justice of the California Supreme Court, because he was troubled by it. Attached to this Brief in Opposition as Appendix B is a copy of said letter.

Contrary to Petitioner's allegations, at no time did the jury find that the use of the gun by Crescencio Chavez Sr. was illegal or wrongful in any way.

RESPONDENTS' STATEMENT OF THE CASE, WHICH IS AMPLY SUPPORTED BY THE RECORD, IS HEREIN PRESENTED:

On November 8, 1985, at approximately 6:00 p.m., Lorinda Rios telephoned the Riverside Sheriff's Department because there was a loud argument between her brother Danny Rios and her father Casimero Rios. She told the police that there was an argument going on and asked if they could send someone over to calm it down. The argument ended in a few moments and Lorinda Rios called the Sheriff again, telling them that they were no longer needed because her brother had left the house and there was no longer an argument.

The dispatcher, after receiving the first phone call from Lorinda Rios, put out a call of a *verbal* disturbance at the Rios' residence (which was next door to the Chavez' residence). The call also indicated that it was *verbal only* and there were no weapons involved. Sheriff's deputies John Ammar ("Ammar") and Wesley Keat ("Keat") (Petitioner herein) responded to the call. John Ammar was the primary deputy responding, and Wesley Keat, who arrived first, was the back-up deputy responding.

At the time that Keat arrived at the scene, standing in the side yard of the Chavez' residence was Crescencio Chavez Jr. ("Junior"), Danny Rios ("Danny") and Junior's infant son, Stephen Chavez ("Stephen").

At that time, Junior was estranged from his wife and was concerned that she would send the police to take Stephen away from him.

Upon seeing the police vehicle parked across the street, Junior went into the Chavez residence along with his son, Stephen.

It is undisputed that Keat went into the Chavez house without a warrant and without first knocking and announcing himself. It is further undisputed that Keat knew, when he went into the Chavez house, that it was not the address reported by the dispatcher, and that he heard, and was personally aware of the recall of that call from the dispatcher.

Not only did Keat not have a warrant nor knock and announce himself when entering the Chavez home, he did not knock and announce himself at the bedroom door where he says he was searching for Junior and, further, that he did not knock and announce himself at the bathroom door where he encountered Junior and Stephen.

Keat, upon attempting to gain entry, was confronted near the front door by Crescencio Chavez, Sr. ("Senior"). Mr. Chavez Sr. did not speak English. Keat understood very little Spanish.

After entering the residence, Keat illegally commenced a search of the house; when Keat got to the bathroom beyond the back bedroom where Junior and Stephen were, *he drew his gun and aimed it at Junior* through the ajar door. Junior asked Keat to put the gun away and he did. Keat then pulled Junior down the hallway while Junior was holding his infant son in his arms. Junior kept asking Keat what the problem was but Keat never answered.

When Keat, Junior and Stephen got to the living room, Junior again asked what the deputy wanted, with no response from Keat, he began striking Junior repeatedly with his service flashlight. During that struggle, Maria De La Luz Chavez

attempted to get her grandson Stephen away from the fray and out of harms way.

When Mrs. Chavez attempted to get her grandson, she was hit with the back of Keat's hand and thrown back. When Deputy Ammar arrived he also grabbed her by her collar and waist and threw her across the room and eventually across a coffee table.

Confronted by the scene described above, Senior fired a gun into the air, *i.e.*, the ceiling. The two Officers drew their weapons and fired at Senior, killing him. Witnesses to the shooting death of Senior were his wife Maria De La Luz Chavez, his grandson Stephen Chavez and his son Junior. Additionally, independent eyewitness Casimero Rios testified that Senior fired into the air and independent eyewitness Harry De Leon testified that he saw Senior fire into the ceiling.

It should be noted that both Casimeros Rios and Harry De Leon were not involved in any way, shape, manner or form other than that they were eyewitnesses to the events described above. They were standing in the doorway after hearing the fracas described above and remained there throughout all of the events stated above.

Junior and Mrs. Chavez were handcuffed, arrested for murder and taken to the police station. The charges filed against them were eventually dropped.

Based on the above stated facts, the court properly instructed the jury (without any objection from the Petitioner) as to proximate cause and concurring causes.

Petitioner offered no instruction concerning an intervening superseding cause or event.

Petitioner now asks this Court to usurp the province of the jury and redetermine credibility and facts.

As previously stated, Petitioner has pressed the same misleading misstatements of fact and law to the trial court as well as to the Court of Appeals; and, in a Petition for Review to the Supreme Court of the State of California. Petitioner was rebuked each and every time.

A copy of the trial court's ruling on the post jury trial motions is attached to this Brief in Opposition to the Petition for Certiorari as Appendix A.

A copy of the Opinion of the California Court of Appeal, 4th District, Division 2 appears in Appendix 1 of the Petition for Certiorari.

A copy of the ruling in the Supreme Court of California appears at Appendix 96 in the Petition for Certiorari.

REASONS FOR DENYING THE WRIT

I.

DOES THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES LIMIT A PEACE OFFICER'S LIABILITY FOR VIOLATION THEREOF ONLY TO INSTANCES WHERE THE PEACE OFFICER USES EXCESSIVE FORCE?

Petitioner's rely solely on *Graham v. Connor,* 490 U.S. 386 (1989).

Graham v. Connor is an "excessive force" case. Nothing in the *Graham v. Connor* case addressed rights granted by the

Fourth Amendment, such as liability for an unreasonable search or liability for an unreasonable seizure. Those questions were answered by the jury when they found that the Petitioner had violated those Fourth Amendment rights against the Respondents and awarded Respondents an amount of damages that they felt was appropriate for said violations.

It is respectfully submitted that it is not the function of this Court to substitute its judgment as to the reasonableness of the jury's award in assessing the appropriate amount of damages for said violations [This is especially true after the award was affirmed by the trial judge, the California Court of Appeal, and a denial of a review by the California Supreme Court.]

The Court of Appeal, based on their review, found that there was *proximate cause* which led to the death of Crescencio Chavez Sr., resulting from the civil rights violations *admittedly committed* by Petitioner Keat.

A homeowner does not have the right to shoot a uniformed officer, even when illegally in his or her home, *so long as the officer does not present an unlawful violent threat against the homeowner or the homeowner's family.*

The evidence clearly established, and the jury obviously found, that Petitioner *did* present such an unlawful and violent threat.

The record is replete with evidence showing that the Petitioner acted like a "thug" and he freely admitted from the witness stand his various violations of law, as though he were proud of it. He now has the unmitigated gall to ask this Supreme Court to accept this case for certiorari claiming that the homeowner's actions were improper when the record clearly shows that Petitioner was beating Crescencio Chavez Jr.; hitting

and manhandling Maria De La Luz Chavez; manhandling Steven Chavez; and refusing to follow even the most basic rules concerning a peace officer's conduct. As the Court of Appeal noted, Mr. Chavez Sr., eventually, in a misguided attempt to stop the melee, fired a gun. (Appendix 2 to the Petition for Certiorari). Independent witnesses testified that Mr. Chavez' gun was fired into the ceiling.

Petitioner would certainly like this Court to never know what really occurred on that fateful evening; however, the record amply bears out Petitioner's brutish character as stated.

The Federal Civil Rights Act (42 U.S.C. § 1983) is replete with cases of police abuses and misconduct. The very purpose of that act is to address and redress police misconduct and abuses. It is the result of civil rights' verdicts that Americans have come to expect that they will be secure in their homes and that the guarantees of the Constitution of the United States and the laws of the land, will be obeyed, not only by them, *but especially by those sworn to enforce and protect them.*

If Petitioner had properly obeyed the laws that he was sworn to uphold, none of these tragic events would have occurred. As a matter of fact, the jury recognized the differences between the illegal and thugish tactics of Petitioner Keat as compared to that of Deputy Ammar when they ruled in favor of Deputy Ammar while holding Keat civilly liable.

This Honorable Court should not grant certiorari for those reasons.

The jury in the case at bar awarded approximately $400,000 in compensatory damages against Petitioner for his civil rights violations and also awarded the sum of $100,000 as punitive damages against said Petitioner.

Petitioner wants this Court to accept this case for review without bringing it within the criteria established in Supreme Court Rule 10. He is unable to state what question, under Rule 10, requires settlement by this Court.

II.

DID THE STANDARDS FOR REVIEWING PUNITIVE DAMAGE AWARDS IN THIS CALIFORNIA CASE MEET CONSTITUTIONAL STANDARDS?

Courts have long reasoned that federal rather than state law should apply to federal claims brought under the Federal Civil Rights Act, an Act which has been in existence since the Civil War.

Under federal law, the defendant has the burden of introducing evidence of his own financial condition. *Woods-Drake v. Lundy,* 667 F.2d 1198, 1203, fn. 9; *Tri-Tron Intern v. Velto,* 525 F.2d 432, 438 (9th Cir. 1975).

The United States Supreme Court in *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 111 S. Ct. 1032 (1991), indicated that a punitive damage award can violate federal constitutional due process *only* if it was reached in proceedings lacking the basic elements of fundamental fairness. *That is not the contention of the Petitioner herein.* Rather, the Petitioner would like this Court to overrule prior decisions of the United States Supreme Court.

The jury in the instant matter was properly instructed on the issue of punitive damages and they were given both the state instruction for punitive damages for the state based claims, and the federal instruction for punitive damages for the federally-based civil rights claims.

It is important to note that the Petitioner, in requesting special findings, never requested a finding as to whether the jury found that Petitioner Keat acted "*wantonly*".

"Wanton action" is one of the elements giving rise to punitive damages in a federal civil rights claim.

The United States Supreme Court has applied Section 1983 damage policies uniformly throughout the country, and the policies followed do not depend on the law of the state in which the federal court sits.

In addition to *Pac. Mutual v. Haslip, supra,* another leading United States Supreme Court Section 1983 punitive damage case is *Smith v. Wade,* 461 U.S. 30 (1983). *Smith v. Wade* involved the standards that govern the awards of punitive damages. In upholding the use of a federal "recklessness" standard for punitive damages in Section 1983 cases, Justice Brennan, writing for the Supreme Court in *Wade,* did not look to the then current Missouri law.

In relying on federal principles to decide Section 1983 damage cases, the Supreme Court has required damages to be based on policies that best serve the purposes of the civil rights statutes. 42 U.S.C. § 1983 damages are based on uniform federal standards.

The Supreme Court in *Smith v. Wade,* 461 U.S. 30 at page 51 stated:

> Reckless or callous disregard for the plaintiff's rights, as well as intentional violations of Federal law, should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages.

See also Savarese v. Agriss, 883 F.2d 1194 (3rd Cir. 1989) reversing a judgment for a defendant on the basis of an ambiguous jury instruction that did not make clear that punitive damages were available in 1983 cases based on conduct that was either reckless or in callous disregard of plaintiff's constitutionally-protected right.

State courts, throughout the country, that have addressed the damages available in Section 1983 actions have applied the same policy used by federal courts. *Sundholm v. City of Bettendorf*, 389 N.W. 2d 849 (Iowa 1986); *Blessum v. Howard County Board of Supervisors*, 295 N.W. 2d 836, 844-46 (Iowa 1980); *Rzeznik v. Chief of Police of South Hampton*, 10 Mass. App. 335, 407 N.E. 2d 389 (1980); *Orr v. Crowder*, 315 S.E. 2d 593, 611-12 (W. Va. 1983), *cert. denied*, 469 U.S. 981 (1984); *Thompson v. Village of Hales Corners*, 115 Wis. 2d 289, 340 N.W. 2d 704, 711 (1983).

State courts have awarded significant awards of compensatory and punitive damages in Section 1983 actions based on federal standards. *Higgs v. District Court*, 713 P.2d 840 (Colo. 1985) upholding $770,000 in compensatory and $250,000 in punitive damages against law enforcement officials, including prosecutors, for unconstitutional investigatory activity involving photo identification of suspects; *City of Amarillo v. Langley*, 651 S.W. 2d 906 (Tex. Ct. App. 1983) ($100,400 award for lost wages for improper use of police cars to block fleeing motorcyclists).

State courts that have addressed the availability of punitive damages in Section 1983 cases have followed federal standards on the definition of punitive damages. *Yaeger v. Hurt*, 433 So. 2d 1176 (Ala. 1983); *Dickerson v. Young*, 332 N.W. 2d 93 (Iowa 1983); *Falkenstein v. City of Bismark*, 268 N.W. 2d 787 (N.D. 1978).

The Supreme Court's decisions in *Smith v. Wade, supra*, and

Pac. Mut. Life Ins. Co. v. Haslip, removed any doubt that federal law that might even arguably have permitted courts to look at state law to fill in the gaps.

In the trial court's federal instructions to the jury the court instructed that the jury could find punitive damage where an act was "wantonly" done. The court instructed:

> An act or a failure to act is "wantonly" done if done in reckless or callous disregard of, or indifference to, the rights of one or more persons, including the injured person.

That quoted portion of the instruction is virtually verbatim from the United States Supreme Court's decision in *Smith v. Wade*, 461 U.S. 30, 51.[2]

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2. Petitioner's claim that the California Code of Civil Procedure § 657 gives them no post trial basis for offering evidence on punitive damages is also without merit.

In *Lovett v. Dintzer*, 131 Cal. 2d 115, 280 P.2d 58 (1955) the court states that evidence as to amount of damages may be considered anew by the trial judge in ruling on a motion for new trial.

There are likewise no restrictions when presenting a motion for a judgment notwithstanding the verdict (as was done in this case) pursuant to California Code of Civil Procedure § 659.

However, since federal law applies to federal claims, *this is really a non-issue.*

There is uniformity in the California District Courts of Appeal on the application of federal law concerning punitive damages when a federal claim is involved.

The Second District Court of Appeal in *Barber v. Rancho Mortgage & Investment Corp.*, 26 Cal. 4 1819 (1994) ruled precisely the same as the Fourth District Court of Appeal did in the instant case.

Both Courts of Appeal held that federal law regarding punitive damages applied to federal causes of action. Therefore, there is no lack of uniformity in the California appellate courts. Petitioner is therefore, unable to claim that as a ground for granting a Petition for Certiorari by this Honorable Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A—TRIAL COURT'S RULING ON MOTIONS

[Commencing at Transcript Page 1101]

* * *

THE COURT: All right. Gentlemen, first of all, I felt then and I feel now that the verdict was a proper one.

With respect to the punitive damages, I have been concerned about that, and I think we talked a little bit about it before we left when the case concluded. I think that the punitive damages were warranted, and I think the amount that was awarded was reasonable. What has concerned me though is whether or not under the state law in Adams they should be permitted or whether they should not be.

Given that we used federal law for so much of the case and that the award of the punitive damages was with respect to the civil rights violation, I am going to allow them to stand.

With respect to jury misconduct, I don't feel that what took place there reaches the level of jury misconduct which should cause the case to be retried or give a — or cause a judgment notwithstanding the verdict, so a new trial and the judgment notwithstanding the verdict motions are denied.

On the qualified immunity question,-I don't know that anything needs to be said about it except that if — I will add this for whatever it is worth. Had I been asked to determine that before it went to the jury, I would have found that they did not have qualified immunity.

* * *

APPENDIX B—LETTER OF JUDGE EUGENE R. BISHOP DATED JULY 13, 1995

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE
COUNTY OF RIVERSIDE

JULY 13, 1995

CHAMBERS OF
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RE: CHAVEZ V. KEAT
CAL APP 4TH 4TH CIVIL NO. EU 11952

Dear Messrs. Jacobsen and Porter:

I am concerned about letters being sent to the Chief Justice of the Supreme Court urging review of the above case which either

misstates the evidence of the case or omits some important fact, i.e. Mr. Porter's recent letter which does not mention that the domestic disturbance call was cancelled before Deputy Keat arrived. These letters should either list the facts as they were presented at trial or make no statement of fact at all.

Yours truly,

s/ Eugene R. Bishop
EUGENE R. BISHOP
JUDGE OF THE SUPERIOR COURT

ERB/sh

cc: Chief Justice Malcolm Lucas

RECEIVED

JULY 17, 1995